



City of Brea

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September 2, 1999

Chairman William Kennard  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW  
Washington, DC 20554

EX PARTE OR LATE FILED

**RE: Ex Parte Filing in cases WT99-217; CC 96-98 /**

Dear Chairman Kennard:

The City of Brea requests that you do not adopt the rule proposed in these cases allowing any telephone company to serve any tenant of a building and to place their antenna on the building roof.

In some states 70 or more new telephone companies have been certified to provide service. Add in the wireless phone companies and under your rule, you may have 100 companies allowed to place their wires in a building and their antennas on the roof—all without the landlord's permission.

The FCC lacks the authority to do this. It would violate basic property rights; a landlord, city or condominium has the right to control who comes on their property. Congress did not give the FCC the authority to condemn space for 100 phone companies in every building in the country.

The FCC cannot preempt state and local building codes, zoning ordinances, environmental legislation and other laws affecting antennas on roofs. Zoning and building codes are purely matters of state and local jurisdiction, which under Federalism and the Tenth Amendment you may not preempt.

For example, building codes are imposed in part for engineering related safety reasons. These vary by region, weather patterns and building type—such as the likelihood of earthquakes, hurricanes and maximum amounts of snow and ice. If antennas are too heavy or too high, roofs collapse. If they are not properly secured, they will blow over and damage the building, its inhabitants or passers-by.

Similarly, zoning laws are matters of local concern which protect and promote the public health, safety and welfare, and ensure compatibility of uses, preserve property values and the character of our communities. We may restrict the numbers, types, locations, size and aesthetics of antennas on buildings (such as requiring them to be properly screened) to achieve these legitimate goals, yet see that needed services are provided. This requires us to balance competing concerns—which we do every day, with success. Everyone wants garbage picked up; no one wants a transfer station. Everyone wants electricity; no one wants a substation near their home.

City Council

Marty Simonoff  
Mayor

Bev Perry  
Mayor Pro Tem

Lynn Daucher  
Councilmember

Roy Moore  
Councilmember

Steve Vargas  
Councilmember

Chairman William Kennard  
September 2, 1999  
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The application of zoning principles is highly dependent on local conditions. These vary greatly state by state, from municipality to municipality and within municipalities. We have successfully applied these principles and balanced competing concerns for eighty years. Zoning has not unnecessarily impeded technology or the development of our economy, nor will it here. There is simply no basis to conclude that for a brand-new technology (wireless fixed telephones) with a minuscule track record, that there are problems on such a massive scale with the 38,000 units of local government in the United States as to warrant Federal action.

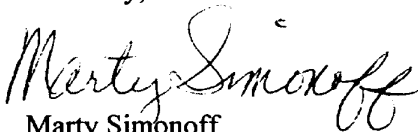
On rights of way, local management of them is essential to protect the public health, safety and welfare. Congress has specifically prohibited you from acting in the area.

We believe the telephone providers' complaints about rights-of-way management and fees are overblown, as shown by the small number of court cases on this— only about a dozen nationwide in the three years since the 1996 Act. With 38,000 municipalities nationwide and thousands of telephone companies this number of cases shows that the system is working, not that it is broken.

Finally, we are surprised that you suggest that the combined Federal, state and local tax burden on new telephone companies is too high. The FCC has no authority to affect state or local taxes any more than it can affect Federal taxes.

For these reasons, we request that you reject the proposed rule and take no action on rights-of-way and taxes.

Sincerely,



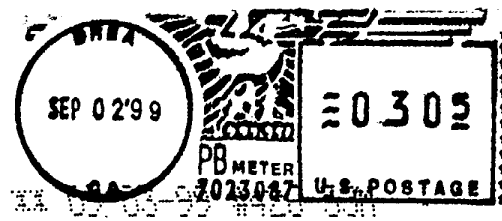
Marty Simonoff  
Mayor

cc: Brea City Council  
Commissioner Harold Furchtgott-Roth, FCC  
Commissioner Michael Powell, FCC  
Commissioner Gloria Tristani, FCC  
Commissioner Susan Ness, FCC  
Ms Magalie Roman Salas, FCC  
Mr. Jeffrey Steinberg, FCC  
Mr. Joel Tauenblatt, FCC  
International Transcription Services  
Mr. Kevin McCarty, U.S. Conference of Mayors



**CITY OF BREA**  
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Brea, California 92821-5732

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FIRST CLASS



RETURN SERVICE REQUESTED

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Federal Communications Commission  
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Washington, DC 20554

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